FILE COPY

Office-Supreme Court, U.S.
FILED
DEC 24 1959
JAMES R. BROWNING, Clerk

[35,955]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1959

No. 568

MARGARET JEFFREY SIEBERT,

Appellant,

against

DEPARTMENT OF WELFARE OF THE CITY OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

CHARLES H. TENNEY,
SEYMOUR B. QUEL,
Counsel for Appellee,
Municipal Building,
New York 7, N. Y.

EDWARD V. DOBERMAN,
Of Counsel.

December 22, 1959.

INDEX

	PAGE
PRELIMINARY STATEMENT	1
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
FACTS	3
ARGUMENT:	
The appellant was afforded adequate opportunity to contest the proceeding on the merits and availed herself of that right. The entry of an order adverse to her contentions did not constitute a denial of due process	4
CONCLUSION	7

STATUTORY PROVISIONS CITED

Domestic Relations Court Act	
Section 101	2, 5
Article 4, §§ 121-143	2

IN THE

Supreme Court of the United States

OCTOBER TERM 1959

No. 568

MARGARET JEFFREY SIEBEL,
Appellant,

v.

DEPARTMENT OF WELFARE OF THE CITY OF NEW YORK,
Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

Preliminary Statement

The appellant has appealed from a final order of the Court of Appeals of the State of New York, dated July 8, 1959, which reversed an order of the Appellate Division, Second Department, and reinstated an order of the Domestic Relations Court of the City of New York.

The prevailing and dissenting opinions in the Court of Appeals are officially reported in 6 NY 2d 536 and are set forth in appellant's statement as to jurisdiction (pp. 26-41). The prevailing and dissenting opinions in the Appellate Divi-

sion are reported in 5 AD 2d 1010 and are set forth in appellant's jurisdictional statement (pp. 42-43):

The appellant was required, pursuant to the order of the Domestic Relations Court which was reinstated by the Court of Appeals, to contribute $20 per month towards the support of her husband's child who was a public charge. The order was made pursuant to Section 101 of the Domestic Relations Court Act of the City of New York which provides in part:

> "5. The step parent of a child is hereby declared legally chargeable with the support of a step child likely to become a public charge provided it is shown to the satisfaction of the court that such step parent had knowledge of the child's existence at the time of said step parent's marriage."

The appellant's jurisdictional statement does not set forth the provisions of Section 101 and does not raise any question directed specifically to that section. The appellant's challenge is to the provisions in Article 4, §§ 121-143 of the Domestic Relations Court which prescribe the methods of procedure in that Court. The appellant contends that these provisions are unconstitutional and deprive her of property without due process.

Appellee moves to dismiss the appeal on the ground that it does not present a substantial federal question.

Statute Involved

The provisions of Article 4, §§ 121-143, of the Domestic Relations Court Act are set forth in the appellant's jurisdictional statement (pp. 15-24).

Statement of the Case

The proceeding was instituted in the Domestic Relations Court to examine the appellant as to her ability to contribute to the support of her stepchild while he remained

a public charge. The appellant appeared at the hearing and was represented by counsel. At the conclusion of the hearing, the justice presiding in the Domestic Relations Court directed appellant to contribute $20 per month towards the support of her step child. No opinion was written in the Domestic Relations Court.

The Appellate Division, Second Department, in a 3-2 decision, reversed the order of the Domestic Relations Court and dismissed the petition, 5 AD 2d 1010, and granted leave to appeal to the Court of Appeals, 6 AD 2d 812. The Court of Appeals in a 4-3 decision reversed the order of the Appellate Division and reinstated the order of the Domestic Relations Court, 6 NY 2d 536.

The Facts

The hearing was held in the Domestic Relations Court on January 7, 1958. Appellant's counsel urged that the Court was without power to charge her with the support of her stepchild (fols. 45-46). After that objection was overruled, the appellant testified that she and her husband, Joseph Siebel, were married on August 7, 1953 (fols. 53-55) and that at the time of the marriage she knew that he had a son (fol. 55).

It appeared from other uncontradicted statements in the record that the boy, also named Joseph Siebel, was born March 27, 1943 (fols. 15, 49). On or about November 1, 1957, he was committed by the Children's Court Division of the Domestic Relations Court, Queens County, to the care and custody of Cedar Knolls School, Hawthorne, New York, an agency authorized by law to receive children on commitment, at a cost of $49 a week to the City of New York (fols. 15-16, 32-33, 49).

The appellant testified that she was employed as assistant manager in a bank and earned approximately $75 per week (fols. 54-57). Her gross pay for 1956 was approxi-

mately $4400 (fols. 75-76). She and her husband jointly own their home (fol. 57). She owns her own automobile (fol. 59).

The appellant then testified as to her various personal expenses (fols. 60-72). She claimed *inter alia* that she contributed $100 per month to the support of her mother, who resided in Pittsburgh (fols. 60-73). We omit further details as to this testimony since the Court ordered appellant to contribute $20 per month towards the support of her stepchild, and no contention has been advanced that that amount was excessive in view of appellant's financial circumstances.

On the same day that the instant hearing was held and the determination made as to appellant, the same justice held a hearing with respect to Joseph Siebel, the appellant's husband and the father of the child involved. At the conclusion of that hearing, an order was entered on the same day directing the father to pay $22.50 per week for the support of the child (fols. 24, 31-32).

ARGUMENT

The appellant was afforded adequate opportunity to contest the proceeding on the merits and availed herself of that right. The entry of an order adverse to her contentions did not constitute a denial of due process.

(1)

It is difficult to follow the appellant's contention that the procedure followed in the Domestic Relations Court violated due process.

Appellant asserts that she "was granted a hearing, not on the merits of the petition, but merely as to her ability to contribute to the support of the stepchild" (Jurisdictional Statement, p. 6). That this statement is simply not true is evident from a cursory examination of the record and appellant's own statement as to the proceedings in the courts below.

At the commencement of the hearing, appellant's counsel urged that she was not legally chargeable for the support of her stepchild since the liability of a "step parent" as provided in Section 101 of the Domestic Relations Law applied only to a stepfather and not to a stepmother. This contention was overruled and counsel's exception duly noted (fols. 35-48). Certainly this was an objection on the merits.

That very same objection and others, including principally the contention that the appellant was not legally chargeable since there was in effect an order requiring the boy's father to contribute to his support, were urged in the Appellate Division and the Court of Appeals.

Had the appellant desired to contest any of the facts necessary to the entry of the order under Section 101, she was perfectly free to do so. For example, she might have contended that the boy was not a public charge or that she was without knowledge of the boy's existence at the time of her marriage to the boy's father. However, she did not contest the evidence as to the boy being a public charge (fols. 15-16, 32-33, 49) and she admitted that she knew of the boy's existence at the time of her marriage to his father (fol. 55).

Appellant's jurisdictional statement (p. 6) suggests that her rights were violated because she was required to submit to an examination as to her financial means before her counsel had an opportunity to review upon appeal the holding of the justice in the Domestic Relations Court that she was legally chargeable for the support of her stepson. No order directing payment could have been made without an examination as to appellant's financial circumstances. Due process certainly does not require that a litigant be afforded an opportunity to appeal from an intermediate ruling made during the course of a hearing. The appellant's rights were sufficiently protected by noting her counsel's objections and affording her the right to urge such objections upon the appeal from the order directing payment by her.

The appellant's argument with respect to the wording of the summons is a play on words (Jurisdictional Statement,

pp. 7-8). The petition charged that the appellant "failed to support the said child" (fol. 17). The summons stated that a petition had been filed "alleging that you have refused or neglected to provide support for dependent child" (Jurisdictional Statement, p. 25). The appellant claims that this was misleading. The fact is that appellant did not contribute to the support of the child prior to this proceeding and expressly refused to do so at the hearing (fols. 66-68). No possible prejudice to her could have resulted from the wording of the summons.

(2)

The majority opinion of the Court of Appeals disposed of appellant's constitutional objections as follows (6 NY 2d at p. 546):

> "Respondent argues that article 4 of title III of the Domestic Relations Court Act of the City of New York, pursuant to which this proceeding was instituted, is unconstitutional. The respondent contends that the proceeding deprives her of property without due process. She asserts that the statute does not afford one an opportunity to interpose an answer to the department's petition; that the allegations of the petition are assumed to be valid in every respect and, if they are not true, there is nothing the respondent can do about it; that the city has made, not merely a prima facie case, but a conclusive case, and the sole issue becomes one of determining how much the respondent can afford to pay and that the respondent's only remedy is an appeal.
>
> This argument is without substance. No answer or formal pleading by respondent was necessary; the allegations of the petition were to be established or disproved by evidence (*Matter of Vendetti* v. *Vendetti*, 16 Misc 2d 2). The respondent was represented by counsel, and had the right to cross-examine and to present evidence. That she chose to rest upon a legal argument which the court below did not accept certainly did not deprive her of a fair hearing."

The minority opinion differed from the majority on the question as to whether appellant could be called upon to

contribute to the expense of her husband's child while there was an order outstanding requiring the father to pay for the boy's support. This was of course a question of state law, which is not raised by appellant on this appeal. The minority opinion in the Court of Appeals, and the two opinions in the Appellate Division, made no reference to appellant's constitutional objections.

CONCLUSION

The appeal to this Court from the order of the Court of Appeals of the State of New York should be dismissed.

Respectfully submitted,

CHARLES H. TENNEY,
SEYMOUR B. QUEL,
Counsel for Appellee.

EDWARD A. DOBERMAN,
of Counsel.

December 22, 1959